

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

DERRICK BENNING,

Petitioner(s),

vs.

WARDEN, LEBANON CORRECTIONAL  
INSTITUTION,

Respondent(s).

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Case Number: 1:06cv862

District Judge Susan J. Dlott

ORDER

This matter is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Michael R. Merz. Pursuant to such reference, the Magistrate Judge reviewed the pleadings and filed with this Court on December 19, 2007 the Report and Recommendations (Doc. 8). Subsequently, the petitioner filed objections to such Report and Recommendations (Doc. 10).

The Court has reviewed the comprehensive findings of the Magistrate Judge and considered de novo all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Recommendations should be adopted.

Accordingly, Petitioner's first ground for relief is without merit. Because he cannot show ineffective assistance of appellate counsel, he cannot offer it as excusing cause and prejudice for his procedural defaults on his other claims. Nor has he successfully shown actual innocence.

It is therefore **ORDERED** that the Petition herein is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

s/Susan J. Dlott  
Susan J. Dlott  
United States District Judge